

Dutch Supreme Court - Substantial compensation award against Ecuador upheld

The Supreme Court today upheld a substantial compensation award payable by Ecuador to oil company Chevron.

The proceedings concerned a conflict over a concession agreement between Ecuador and a subsidiary of Chevron. In 1964 Ecuador granted Chevron a concession for oil extraction and exploitation in the Amazon territory, which expired on 6 June 1992. In the early 1990s Chevron lodged seven court cases in Ecuador, based on alleged breaches of the concession agreement by Ecuador. In turn, Ecuador claimed that Chevron had polluted the concession area.

In 1997 a Bilateral Investment Treaty (BIT) entered into force between Ecuador and the United States, aimed at promoting economic cooperation between them. The treaty included provisions to protect investments by legal entities in each other's countries. A legal entity from one country that was not satisfied that it had been afforded proper protection in the other could invoke the arbitration clause to submit the dispute to an arbitral tribunal.

Chevron initiated arbitration proceedings against Ecuador under the treaty, arguing that the country's courts had failed to rule on its claims over a period of nearly ten years and that those claims should be deemed 'investments' within the meaning of the BIT. One of Ecuador's arguments was that such claims could not be regarded as investments and that the arbiters were therefore not competent to rule on the dispute.

The arbiters accepted jurisdiction and, in arbitration proceeding conducted in The Hague, ordered Ecuador to pay a substantial sum in compensation. Ecuador then lodged proceedings in the Dutch courts, seeking to have the arbitral decision overturned. The district court dismissed Ecuador's claim and the Court of Appeal upheld that judgment.

Advocate General Jaap Spier advised the Supreme Court to overturn the Court of Appeal's decision, but the Supreme Court dismissed the appeal in cassation. It ruled in particular that although the arbitration may have impinged on Ecuador's national sovereignty to a certain extent, this was a consequence of the treaty (i.e. the BIT) that it had chosen to conclude with the US and the remarkably wide definition of the concept of investment contained in it, a definition that deviates from the term's common usage. The Court of Appeal was free to

decide that the legal claims lodged by Chevron that were pending when the BIT entered force in 1997 should be regarded as ‘investments’ in the particular sense accorded to that term by the contracting parties, even though this term is not usually taken to encompass such claims.

Investment treaties – and the far-reaching consequences that they can have – attract a great deal of attention throughout the world.

This news item concerns the Supreme Court’s judgment of 26 September 2014. The full text of the judgment (13/04679; in Dutch only) can be found at www.hogeraad.nl, ECLI:NL:HR:2014.